

United States Marshals Service District of Alaska

Admiralty Information Packet

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In this information packet, we have tried to answer some of your most commonly asked questions.

The packet includes a Schedule of Fees and Commissions, the District of Alaska Admiralty Procedures, and some samples of how our U.S. Marshal Form 285s should be completed.

Also included are examples of an In Rem Arrest Warrant, Order Appointing a Substitute Custodian and a Notice of Arrest received from the District Court. The three documents are from three different cases and three different attorneys. You will notice that there have been some name changes.

Please note the section in bold type on page two of the of Order appointing Pat Garrett as Substitute Custodian. Use this language in your motion to the court and order prepared for the judges's signature.

The Local Admiralty Rules can be found on the U.S. District Court's Homepage at:
<http://www.akd.uscourts.gov>

Schedule of Fees and Commissions

Policy: Since December, 1993 the U.S. Marshals does not serve Summons and Complaints unless ordered by the court.

Process: For each item served by mail or forwarded for service to another Judicial District: **\$8.00** plus postal fees

For each item personally served (includes endeavors) by a Deputy U.S. Marshal, **\$45.00** per Deputy U.S. Marshal, per hour or portion of an hour.

For preparing a Notice of Sale, Bill of Sale or U.S. Marshal Deed. **\$20.00**

For Copies: **\$0.10** per page

Mileage: **\$0.365** per mile

Additional expenses: Actual costs of round trip mileage (at Federal Travel Regulation rates) and out of pocket expenses, e.g., tolls, parking, airfare, vehicle rental, keeper fees, insurance premiums, advertising costs.

Commissions:

On the **first \$1,000.00** collected, or portion thereof the commission is **3%** on the amount in **excess of \$1,000.00** the commission is **1.5%**.

The minimum commission is \$100.00 and the maximum commission is \$50,000.00.

I. **Pre-Arrest:** These are some of the questions you will be asked when you initially contact the Marshal Service concerning a vessel arrest.

- Is the crew still on board the vessel?
- How many people are on board?
- Do they know the vessel is going to be arrested?
- Are you aware of any assaultive behavior from crew members in the past?
- Where do you plan to have the vessel arrested?

This information helps us determine how many Deputies will be needed to arrest the vessel. The deputies' safety is always our prime consideration.

- A. Marshals Service policy prohibits the seizure of vessels on the high seas.
- B. If a vessel cannot be secured to a dock or buoy, the Marshals Service will seek relief from the Court's Order to seize the vessel, unless a Substitute Custodian has been appointed by the Court.
- C. If the vessel is secured to a dock or buoy, the attorney has two options:
 1. Obtain a Substitute Custodian Order at the same time the In Rem Warrant is issued. Historically, this option has been the least expensive. The amount of the deposit required by the Marshals Service is generally \$ 3,000.00 but the deposit can vary with the location of the vessel. The deposit covers the following expenses:
 - a. Transportation costs and per diem expenses for the Deputy or Deputies involved in the seizure.
 - b. U.S. Marshals Service fees: As of September 5, 2000 the rate is \$ 45.00 per hour (or portion thereof) per Deputy U.S. Marshal involved in the seizure.
 - c. Publication costs of the Notice of Arrest and Notice of Sale.
 - d. Insurance Cost: A minimum of \$ 1 million per vessel is obtained to cover the U.S. Marshals Service at a cost of \$5.00 per day, with a minimum cost of \$50.00. Insurance for the substitute custodian can be obtained at an additional cost of \$18.00 per day, with a minimum cost of \$90.00. These costs will be higher with higher coverage. The actual insurance coverage is determined by the value of the vessel. It should be noted that the insurance only insures the government and custodian against fault based liability for damage to or loss of the vessel and/or its equipment and appurtenances. It does not otherwise insure against loss or damage. Arrest of vessel may void it's hull and machinery insurance.

The Marshals Service uses one company:

Marsh Risk & Insurance Services
One California Street
San Francisco, California 94111
Point of contact: Veit Metzroth
Phone: 415-743-8509

Warranties:

- A Court Appointed Custodian must provide satisfactory evidence of insurance to the U.S.

Marshal Service to be declared under the separate Custodian policy, if they decide to use a company of their choice.

- Movements in excess of 25 miles of vessels between ports are held covered at additional premium but must be approved by underwriters. Vessels can be moved only under court order except to prevent or lessen a loss. Movements under 25 miles need not be reported. The same applies to cargo.
- Underwriters' prior approval is required for insuring vessels carrying hazardous cargo as defined by U.S. Coast Guard regulations or for insuring the cargo itself.
- Limits in excess of \$10,000,000 and not exceeding \$30,000,000 require a condition and valuation survey of vessel, cargo, crew and passengers (if any) be performed at assured's expense.

2. The attorney can request the Marshals Service to maintain custody of the vessel and hire a keeper. This option has been proven to be the most expensive. In one instance the guard cost alone exceeded \$57,000.00 in a government case. The Marshals Service will contract with a bonded and licensed security/guard company and arrange for 24 hour security for the vessel. This will take additional time because of Federal Procurement Regulations. We will be contacting at least 3 companies for bids. In addition to the guards, larger vessels may require a crew to be hired to handle any special maintenance and/or safety considerations. The required deposit will cover the first 21 days of seizure expenses, keeper and crew costs. When the deposit is depleted to point where there is only seven days of expenses remaining, the attorney will be asked to advance additional funds to cover another 21 days of expenses. In accordance with Local Admiralty Rule (LAR) (e)11, if the attorney has not deposited the expense money within 2 business days of the request, the Marshal Service will petition the Court to release the vessel. In addition to the expenses covered by the deposit where you have obtained a substitute custodian, the deposit must also cover the following expenses:

- a. Wages of guards and any required crew members and their per diem costs. Transportation of personnel to the arrest site if the site does not have an acceptable security company and /or necessary crew members at that location.
- b. Tugs, cars, water craft to transport personnel to and from the vessel if it is at a buoy.

D. Special Circumstances: If at any time of an attempted arrest, it appears that the vessel is in a dangerous condition (e.g., sunk, sinking or in danger of sinking, cargo on fire, etc.) it will not be arrested by the Marshals Service. The Marshals Service will return to the Court for further guidance.

E. The attorney must provide a USM-285 (request forms from the USMS office) for each vessel and/or person to be served at the time of the arrest. **The USM-285 should include in the special instruction box a list of the documents to be served.**

1. In a normal vessel arrest, it is recommend that the following be served:

- a. The Vessel
- b. The Substitute Custodian
- c. Captain/master, if on board

2. The paperwork package for the vessel must contain a copy of the warrant, complaint (some attorneys include a summons), and a copy of the Substitute Custodian Order. The substitute

custodian should receive the same documents in their package to enable them to respond better to questions they may receive.

- F. **The Marshals will not make any vessel arrest without a deposit.** If an attorney wants the In Rem Warrant held in abeyance they must obtain a court order in accordance with LAR (e)(5)
- G. The attorney is responsible for locating the vessel. Upon notification of the location of the vessel, the Marshals Service will attempt to arrest it as soon as possible. The Deputy will contact the appointed substitute custodian before leaving to arrest the vessel. If we travel to the location and discover that the vessel has departed while the Deputy was en route, all fees and expenses incurred are deducted from the deposit.
- H. The Marshals Service will **always** seek guidance from the Court regarding the arrest of vessels involved in bankruptcy proceeding.

II. **Post-Arrest:**

- A. The Marshals Service needs USM-285s in order to publish the Notice of Arrest and Notice of Sale. This form is also needed to conduct the sale. Some attorneys publish their own Notice of Arrest, if you do so, you need to provide us with proof of publication.
- B. The most common location for admiralty sales is the Federal Building and Court House at 222 West Seventh Avenue, Anchorage, Alaska, 99513. Some attorneys elect to have the sale at the vessel or harbor master's office where the vessel is located. If this option is elected, the travel costs, per diem expenses, and Marshals Service fees are deducted from your deposit.
- C. It is recommended to have the substitute custodian conduct an inventory of vessels when he signs for vessels from the deputy. If the vessel is broken into have the substitute custodian report it to the local police and send a copy of the police report to the Court.

COSTS OF ARREST AND CUSTODY

Costs of arrest may include those expenses incurred by the Marshals Service in wages to a deputy marshal and for travel, lodging, and meal expenses in the round-trip to and from the vessel's location. The deposit the Marshal will require before proceeding with arrest usually ranges between \$3,000 and \$6,000. Total expenditures by the Marshall may be substantially less than this.

Following arrest, it may be necessary to keep the vessel in custody for several months. Economic considerations almost always compel plaintiffs to engage "substitute custodians." It is almost always best to obtain an order appointing a substitute custodian prior to arrest. The costs of custody will typically include the custodian's daily, weekly, or monthly fee, moorage or storage ashore, electricity, the custodian's liability insurance, and the government's liability insurance. Custodial liability insurance may be obtainable through Plaintiff's broker, but can be obtained through the Marshals' office. It should be noted that the insurance only insures the government and the custodian against fault-based liability for damage to or loss of the vessel and/or its equipment and appurtenances. It does not otherwise insure against loss or damage. Arrest of a vessel may void its hull and machinery insurance.

SECURITY IN LIEU OF ARREST OR CUSTODY

Arrest may be avoided, or a vessel released from custody following arrest, upon the posting of a bond or by the stipulation to other security by the parties. Vessel interests are entitled to post a cash or surety bond as alternative security, so long as the bond is in an appropriate

amount and otherwise complies with applicable law, rules, and court requirements. See local general rules 65.1, 67.1 & 67.2; miscellaneous general order January 14, 1991. If Plaintiff agrees, a letter of undertaking or other type of collateral or commitment pursuant to a "stipulation for value" may be provided. Once a bond, letter of undertaking, or stipulation for value is in place, the vessel will almost certainly sail free and clear of the claim thereby secured, which thereafter must be pursued against the security.

SPECIAL CONSIDERATIONS

Early consideration should be given to whether the vessel will need to be shifted to another location or to another port at the time of, or subsequent to, arrest, whether a surveyor will need to board the vessel, and whether cargo or other items should be removed from the vessel. Such considerations should be brought to the court's attention and an appropriate order obtained as early as possible. Serious consideration must be given to the risk of theft. While it may seem that a "Marshals' sticker" would warn people away from a vessel, in fact some seem to consider it an invitation to visit a vessel. Finally, due consideration should be given to proper maintenance during long periods of custody, and to winterization.